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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

No. 83-5406

TIMOTHY DALE BUNCH,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

Upon A Petition For Writ of Certiorari To The
Supreme Court of Virginia

BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does Bunch's death sentence, imposed under the "vileness" standard, violate Godfrey v. Georgia?

2. Is certiorari review warranted in this case?

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PRELIMINARY STATEMENT

The Respondent, Commonwealth of Virginia, respectfully prays that a Writ of Certiorari to the judgment of the Supreme Court of Virginia entered in this case on June 17, 1983, be denied.

OPINION BELOW

The judgment of the Supreme Court of Virginia is a published Opinion reported as Bunch v. Commonwealth, ___ Va. ___, 304 S.E.2d 271 (1983). A copy of the Opinion is attached to the Petition for a Writ of Certiorari as Appendix A.

JURISDICTION

The jurisdiction of this Court to issue the writ of certiorari is grounded upon 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

The relevant constitutional and statutory provisions are set forth in the Petition at page 2.

Rule 17.1 of the Rules of the Supreme Court of the United States provides in pertinent part that "[a] review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor...."

STATEMENT OF THE CASE

The Petitioner, Timothy Dale Bunch, was convicted at a jury trial in the Circuit Court of Prince William County, Virginia, on August 11, 1982. He was found guilty of capital murder in the commission of robbery while armed with a deadly weapon. The jury fixed his punishment at death, and on November 12, 1982, the trial judge affirmed the jury's recommendation of the death sentence and entered final judgment. Bunch's conviction and death sentence were affirmed by the Supreme Court of Virginia on June 17, 1983.

The record shows that in the months of December, 1981 and January and February, 1982, Bunch, a sergeant in the United States Marine Corps, was detached from duty in Japan and assigned to temporary duty at Quantico in Prince William County. During this period, he met Su Cha Thomas, a divorced woman living alone in Dale City near Quantico, and an

intimate relationship developed between them. At the time, Bunch was separated from his wife.

On February 2, after Thomas had failed to report for work, Prince William County police went to her home and found her body hanging from a door knob by a scarf tied around her neck. An autopsy revealed a gunshot wound to the head and "congestion of the blood [vessels] within the lungs." (Aug. 9 tr. at 182.) The medical examiner concluded "this was a combined cause of death due to a gunshot wound to the head...with a secondary complication, asphyxiation by hanging." (Aug. 9 tr. at 286.)

One of the items missing from Thomas's home was a lady's Rolex wristwatch. On the day Thomas's body was discovered, Bunch sold a similar watch to an Arlington County pawn shop. A report filed by the pawn shop with the police, as well as other information, led investigators to Bunch who had returned to his permanent duty station in Japan. (Aug. 9 tr. at 218-235.)

Bunch was interrogated in Japan on February 16 by Donald L. Cahill, a Prince William County police investigator who had journeyed to Japan with warrants charging Bunch with the robbery and murder of Thomas. In the course of the interrogation, Bunch made certain incriminating statements to Cahill. Bunch was returned to the United States, and, upon his arrival in Prince William County on February 21, made a statement to Cahill admitting he had killed Thomas on January 31 and had taken her Rolex watch, a diamond ring, a string of pearls, and other items of jewelry. Bunch stated

he killed Thomas because "she was a slut and she reminded him too much of his wife and he wanted her money." (Aug. 10 tr. at 22.)

The evidence presented at trial reveals that Bunch planned days ahead to murder and rob Thomas, a woman with whom he had been involved in an intimate relationship. (Aug. 9 tr. at 257; Aug. 10 tr. at 14-20.) She was not the only object of his murderous musings, however; he "wanted to kill somebody," and he thought about "killing some prostitutes." (Aug. 10 tr. at 20.) In any event, when he awoke on January 31, he decided he would kill and rob Thomas that day. (Aug. 10 tr. at 19-20.) He went to her home about noon, had intercourse with her, and left with the promise to return later. He returned at 6:00 p.m. and invited her to go to dinner. While she dressed, he "drank some wine." (Aug. 10 tr at 14, 19.)

When Thomas announced she was "ready to go," Bunch started playing "hide and...seek" with her. He hid in the bathroom with his small pistol "tucked...in his pants, cocked and ready to go." When Thomas found him, she said, "okay...let's go." As they walked down the hallway, he shot her. He felt "real good when he shot her, to the point where he actually had a sexual orgasm." (Aug. 10 tr. at 20-21.)

During the next hour or so, with Thomas dying on the floor, Bunch amused himself drinking Thomas's wine, listening to music, and ransacking her house. He had "a euphoric feeling about the whole thing." (Aug. 10 tr. at 21-22.)

After some two hours, Bunch tied a knot in a scarf Thomas was wearing, dragged her to a door, and "draped the

scarf over the doorknob." He "hung her up...to make sure she didn't talk and there were no witnesses around." After Bunch "exerted [himself] by pulling [Thomas] across the floor," he had a "blood flow" to his "sexual parts" and experienced a "feeling" of a "full erection." It was Bunch's belief that Thomas was still alive when he dragged her to the doorknob and hanged her. Before leaving the house with Thomas's jewelry and other items, Bunch wiped his fingerprints "off everything" and "took the phone off the hook." (Aug. 10 tr. at 21, 94, 174, 223.)

Bunch told Investigator Cahill that he had "gotten a thrill" from killing Thomas, that he "wanted to kill some more," and that he "would have killed some hookers...if he had stayed in the area." He also said that he wanted "to see how many [killings] he could get away with." (Aug. 10 tr. at 22; Commonwealth's Exhibit No. 35). Earlier, Bunch had told his friend Rider that he would like "to maybe become a hit man or a mercenary," and he told another friend he "wanted to be in the Mafia." (Aug. 11 tr. at 78-79, 86.)

Additionally, three days after murdering Thomas, Bunch asked Rider if he thought a person could get paid $15,000 or $20,000 to "bump somebody off." Rider replied, "I don't know," and Bunch "sort of chuckled." (Aug. 9 tr. at 273.)

Following Bunch's arrest, he told a cellmate, Bruce Jackson, about the murder he had committed. This cellmate testified that Bunch "thought it was somewhat amusing," and Bunch "thought he could plead insanity and beat the charge." (Aug. 10 tr. at 225.)

Investigator Cahill gave a final word of testimony relating to the depravity-of-mind issue. He was asked while on the witness stand whether Bunch displayed any remorse or sorrow for killing Thomas. Cahill replied, "No, sir." (Aug. 10 tr. at 30.)

ARGUMENTS AGAINST GRANTING CERTIORARI

I.

PETITIONER'S DEATH SENTENCE DOES NOT VIOLATE THE HOLDING OF GODFREY v. GEORGIA.

Bunch argues that his death sentence, imposed under the "vileness" standard, violates this Court's holding in Godfrey v. Georgia, 446 U.S. 420 (1980). In comparing his case to Godfrey, however, he fails to construe the facts of his case in the light favorable to the Commonwealth.

The law is clear that "[o]nce a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution." Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original). Reasonable inferences from the evidence are to be drawn for the prosecution. Id.

In violation of these principles, Bunch treats his own testimony as having been accepted by the jury and fails to draw reasonable inferences in favor of the Commonwealth. He suggests that his victim, Su Cha Thomas, was not in fear of harm before being shot and that no aggravated battery was committed. Bunch also contends that his mental state was not shown to involve a consciousness materially more depraved

than that of any person guilty of murder. None of these assertions are accurate.

The instant case is clearly distinguishable from Godfrey v. Georgia. There, the defendant received a death sentence for killing his wife and mother-in-law. Believing that the mother-in-law had prevented a reconciliation with his wife, he went to the mother-in-law's trailer and fired a shot through a window, killing his wife instantly. He entered the trailer and shot his mother-in-law, killing her instantly. He then called the sheriff's office, reported the crimes, and asked to be arrested. He later told an officer he had committed "a hideous crime." 446 U.S. at 426, 100 S.Ct. at 1763.

This Court overturned the death sentence, holding that in light of the facts and circumstances, the Georgia Supreme Court had applied an improper constitutional construction of the depravity-of-mind factor. This Court pointed out that the defendant's victims were killed instantly, that they were family members who were causing him extreme emotional trauma, and that he acknowledged his responsibility for his acts and the heinous nature of his crimes.

As noted by the Virginia Supreme Court below, in stark contrast the facts of this case display extreme baseness. Bunch, with no provocation whatsoever from his victim, planned her murder with cold-hearted calculation and larcenous intent. He carried out his murderous plan in true "hit man" style of complete detachment, yet with a bizarre sexual reaction on his part. As she lay dying, he removed her jewelry and enjoyed himself by partaking of her wine,

listening to music, and rifling through her personal belongings. Then, in a final gesture of contempt for his victim and to make certain she would never bear witness against him, he garroted her, dragged her across the floor, and hung her from a doorknob, the exertion causing his sexual arousal. From these facts, the jury clearly could find that an utter depravity of mind accompanied the murder in this case.

In his own testimony Bunch said that he shot the victim once in the head as she walked away from him, and, as noted before, in his instant petition he asserts that Thomas was in no fear of harm. Also, he claims that no aggravated battery occurred.

The medical examiner testified, however, that the bullet struck Thomas, not in the back of the head, but on the left side above her ear and that the bullet's path was "towards the back, downward, and to the deceased's right." (Aug. 9 tr. at 177.) This permitted the trier of fact to draw the inference that Bunch was standing above and facing Thomas at her side with the gun pointing down and that she knew Bunch was preparing to shoot her.

Furthermore, the medical examiner testified that Thomas could have lived "for an hour to two hours" after she was shot. The doctor also stated that Thomas's lungs "exhibited congestion" and that with "constriction around the neck, one would get congestion of the lungs." After stating these observations, the medical examiner opined that "this was a combined cause of death due to a gunshot wound to the head and...with a secondary complication, asphyxiation by hanging." From this and other evidence previously recited,

the jury could infer that Thomas was still alive when Bunch "hung her up" and thus could conclude that she was the victim of an aggravated battery to her person. Indeed, during his pretrial confinement Bunch told a cellmate that he thought Thomas was alive when he hanged her. (Aug. 10 tr. at 223.) In any event, Godfrey did not hold that an aggravated battery must precede the victim's death for the vileness standard to be satisfied.

Finally, Bunch argues that Godfrey requires instructions to define terms such as those contained in the Virginia capital sentencing statute. This is not correct. Westbrook v. Zant, 518 F. Supp. 1262, 1264 (M.D. Ga. 1981); accord Stamper v. Baskerville, 531 F. Supp. 1122, 1130-1131 (E.D. Va. 1982).

The point of the Godfrey decision was that the Georgia Supreme Court in its application of the facially constitutional statute must not adopt an overly broad and vague construction of the statute. Also, in Godfrey this Court found that the particular facts and circumstances of the murder in that case "did not satisfy the criteria laid out by the Georgia Supreme Court itself...." 446 U.S. at 432.

In the instant case the Virginia Supreme Court did not apply the Virginia statute in a way inconsistent with its prior decisions, and Bunch's depraved murder of Thomas clearly met the vileness standard. Also, the jury was instructed under the vileness standard that the murder must have involved an aggravated battery to the victim "beyond the

minimum necessary to accomplish the act of murder." (Instruction No. 2).

THIS CASE DOES NOT MERIT REVIEW BY THIS COURT.

A Writ of Certiorari is not a matter of right, but of judicial discretion. It will be "granted only when there are special and important reasons therefor." Rule 17.1, Rules of the Supreme Court of the United States.

This case really concerns an interpretation of Virginia law and the application of that law to a particular and unique set of facts. Furthermore, there is simply a basic dispute here over those facts and the proper inferences that could be drawn by the jury from the evidence. Bunch's erroneous interpretation of the evidence colors and forms the context of his arguments. This case is not a matter of special importance for review by this Court.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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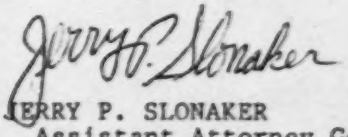

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CERTIFICATE OF SERVICE

I, Jerry P. Slonaker, Assistant Attorney General of Virginia, counsel of record for the Respondent in the captioned matter and a member of the Bar of the Supreme Court of the United States, do hereby certify that on or before the 14th day of October, 1983, three copies of the foregoing brief for the Respondent in opposition to the granting of a writ of certiorari were mailed first class, postage prepaid, to Ms. Ellen Kreitzberg, Esquire, 1810 California Street, N.W., Washington, D.C. 20009, counsel for Petitioner.

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